

— Check against Delivery —

**Fighting Cartels Under the Hong Kong Competition Ordinance:  
Lessons from the European Union**

**Keynote speech by Ms Anna Wu  
Chairperson, Competition Commission**

**at Competition Law Conference  
CUHK Faculty of Law's Centre for Financial Regulation  
and Economic Development  
European Union Academic Programme Hong Kong  
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Good afternoon ladies and gentleman.

Thank you Sandra, the Chinese University of Hong Kong and the European Union Academic Program for inviting me to speak this afternoon.

I'm really pleased to see such a level of interest in the Hong Kong Competition Ordinance, particularly by the visitors from overseas who are here today. The Commission is also well represented by Thomas Cheng, my fellow Member, and by some of the staff of the executive.

I would like to cover three main issues with you today.

1. **A short history**. I will give a brief overview of the recent activities of the Competition Commission.
2. **A look to the future**. I want to give a preview of things to come and our progress towards full implementation of the Competition Ordinance.
3. **Focus on Cartels**. Given this event is all about cartels I will briefly mention some of the Commission's early work and thinking on this topic, but of course it will be at a much higher level than the rest of your discussions over today and tomorrow.

## **THE ROAD TO 2015**

Although the path to a cross-sector competition law in Hong Kong goes as far back as the early 1990s, it was not until 2012 that the Competition Ordinance was finally enacted. Needless to say, the passage of the Ordinance came after very extensive public consultation and debates in LegCo.

At present, the substantive prohibitions against anti-competitive conduct and the Commission's investigation powers are not in effect. Only institutional architecture has been put into place, including:

- the appointment of the Commission members in May 2013; and
- the hiring of our professional staff from overseas and here in Hong Kong who began in their posts in the course of 2014.

The Commission's core work to date, which is a prerequisite to the full commencement of the Ordinance, has been the preparation of draft Guidelines on the Competition Rules and the relevant Commission procedures. Following a public engagement process in May, the set of six guidelines were published in October for public comment. These guidelines are intended to provide general guidance on how the Commission will interpret and apply relevant provisions of the Ordinance.

The Commission also has an advocacy role under the Ordinance, which we take very seriously and have begun in earnest, including the production of a short, and we think interesting and entertaining, video on cartels. For those of you who live here, the video will be playing on Hong Kong buses during April, so you may be able to follow your professional interest during your commute to work. For our overseas visitors if you are keen to watch it you can access it via our website.

Fair to say we had a very busy 2014! But an equally ambitious agenda lays ahead for 2015.

## **NEXT STEPS**

We were extremely pleased to receive some very substantive comments on our draft guidelines. All 64 submissions are available on our website. We at the Commission are now busy considering those submissions and finalising the draft Guidelines which will be published on Monday so that we are ready to consult with LegCo later in the spring.

Continuing our transparent approach to helping people understand our decision making process, we will also release a Guide to the consultation process and the revised Guidelines. This Guide will explain how the Commission considered key submissions it received and why it did, or did not, make corresponding changes to the Guidelines.

We are also putting into place the internal procedures and policies for the Commission so we can be ready to be an effective law enforcer on Day 1.

In addition, the Government and Judiciary are moving forward in the months to come with a number of key elements:

- The Legislative Council is currently considering a number of pieces of subsidiary legislation required under the Ordinance; and
- The Competition Tribunal is working with stakeholders to finalise the relevant rules of procedure.

With all the various parties moving their pieces of the jigsaw into place, and we at the Commission being ready by mid 2015 we hope the Ordinance can take effect a short time thereafter.

## **FOCUS ON CARTELS**

It will come as no surprise to you that our expectation is that cartels will be a key focus of the Commission's work once the Ordinance takes effect. Like other competition authorities around the world, our key messages to business, especially small and medium enterprises, have focused on 4 key "Don'ts":

- Don't fix prices
- Don't restrict output
- Don't share markets
- Don't rig bids

Our draft Guidelines published last October made it clear that the Commission will consider cartels to be examples of conduct considered by its very nature to be harmful to competition without having to examine its effects. The Commission will consider such arrangements to have the object of harming competition.

I don't think I am giving away any secrets in advance of Monday by letting you know that our revised draft Guidelines will maintain this approach.

I anticipate that how we will assess and investigate cartels will be very similar to many other jurisdictions, including the European Union. Of course Hong Kong is different from the EU in that it is a prosecutorial system where the Commission will be required to bring a case to the Competition Tribunal in order to have a pecuniary penalty apply. In that respect, experiences of other prosecutorial jurisdictions such as the USA, Canada and Australia in bringing cartel cases will be relevant.

As with most other competition regimes, the Commission will be adopting a leniency policy in order to assist with the detection of cartels. In developing our policy we have been in the fortunate position, as a latecomer to competition law to leverage off the experiences of other jurisdictions, including through our membership of the International Competition Network Cartel Working Group.

In addition to the ICN we are also seeking assistance on a bilateral basis from other agencies. Currently we have staff members on secondment in Singapore, Sydney and Wellington. Soon one more will go to Sydney and another to Ottawa. All of them are gaining invaluable experience on cartel investigation matters, including dealing with leniency applications. The practical experience they obtain, along with the experiences of those of our management and staff who have previously worked in competition authorities will mean we are ready to start cartel work as soon as the Ordinance commences.

We particularly appreciate the assistance our colleagues at DG Competition have provided us and promised to provide us in the future. We look forward to co-operating with them on many issues.

### **Conclusion**

While we at the Commission have been fortunate to access international expertise through a range of activities, it is rare that we have the opportunity here in Hong Kong to hear about cartel issues from so many well renowned academics and experienced practitioners. I congratulate Sandra, Chinese U and the European Union Academic Program on putting together such a comprehensive and timely event. I wish you well in your deliberations over the next 2 days.